

11-597 ARKANSAS GAME & FISH COMMISSION V. UNITED STATES

DECISION BELOW: 637 F3d 1366

LOWER COURT CASE NUMBER: 2009-5121, 2010-5029

QUESTION PRESENTED:

Petitioner Arkansas Game & Fish Commission, a constitutional entity of the State of Arkansas, sought just compensation from the United States under the Takings Clause of the Fifth Amendment for physically taking its bottomland hardwood timber through six consecutive years of protested flooding during the sensitive growing season. The Court of Federal Claims awarded \$5.7 million, finding that the Army Corps of Engineers' actions foreseeably destroyed and degraded more than 18 million board feet of timber, left habitat unable to regenerate, and preempted Petitioner's use and enjoyment. The Federal Circuit, with its unique jurisdiction over takings claims, reversed the trial judgment on a single point of law. Contrary to this Court's precedent, a sharply divided 2-1 panel ruled that the United States did not inflict a taking because its actions were not permanent and the flooding eventually stopped. The Federal Circuit denied rehearing *en banc* in a fractured 7-4 vote. The question presented is:

Whether government actions that impose recurring flood invasions must continue permanently to take property within the meaning of the Takings Clause.

JUSTICE KAGAN TOOK NO PART.

CERT. GRANTED 4/2/2012